

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
CROWN GENERAL CONSTRUCTION, INC.,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 256

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$50.00 civil penalty for an alleged open burning violation of respondent's Regulation I, came before two members of the Pollution Control Hearings Board (W. A. Gissberg and Walt Woodward) in the conference room of respondent's Seattle office at 9:30 a.m., March 20, 1973.

Appellant appeared through its president, Morris R. Leischner; respondent through its counsel, Keith D. McGoffin. Evan Aaron, Seattle court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were offered and

1 admitted.

2 On the basis of testimony heard and exhibits examined, the Pollution
3 Control Hearings Board prepared Proposed Findings of Fact, Conclusions and
4 Order which were submitted to the appellant and respondent on
5 January 31, 1973. No objections or exceptions to the Proposed Findings,
6 Conclusions and Order having been received, the Pollution Control Hearings
7 Board makes and enters the following

8 FINDINGS OF FACT

9 I.

10 On December 5, 1972, a fire of scrap lumber was observed by an
11 inspector on respondent's staff on a site at Pacific Highway South and
12 263rd Avenue South, Kent, King County, being used by appellant in its
13 construction of a sewage pumping station. No permit had been issued
14 for the fire. The inspector served Notice of Violation No. 7179 upon
15 appellant, citing Section 9.02 of respondent's Regulation I. In
16 connection therewith, respondent subsequently served Notice of Civil
17 Penalty No. 576 upon appellant in the sum of \$50.00. That penalty is
18 the subject of this appeal.

19 II.

20 December 5, 1972 was a cold day and the fire had been ignited without
21 appellant's approval by an employee for warmth. Appellant was using a
22 truck to haul away scrap lumber to a nearby refuse site; the fire's chief
23 purpose was not the disposal of waste material.

24 III.

25 Section 9.02 of respondent's Regulation I, as amended by Resouluti
26 141 on April 12, 1972, makes it unlawful to cause or allow outdoor fires

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 except on a limited, permit-controlled basis.

2 From these Findings, the Pollution Control Hearings Board comes
3 to these

4 CONCLUSIONS

5 I.

6 Appellant was in violation of Section 9.02 of respondent's
7 Regulation I on December 5, 1972 at Pacific Highway South and 263rd
8 Avenue South, Kent, King County.

9 II.

10 The violation, the first one issued by respondent to appellant,
11 was technical inasmuch as the purpose of the fire was for human warmth
12 on a cold day, not for the disposal of scrap lumber.

13 III.

14 While the civil penalty of \$50.00 is one-fifth of the maximum
15 allowable amount which could have been invoked, the mitigating
16 circumstances warrant further leniency.

17 Therefore, the Pollution Control Hearings Board makes this

18 ORDER

19 The appeal is denied, but Civil Penalty No. 576 is suspended
20 pending no similar violations of respondent's Regulation I for six
21 months from the date of this Order.

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27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 DONE at Lacey, Washington this 14th day of June, 1973.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 W. A. Gissberg
6 W. A. GISSBERG, Member

7 James T. Sheehy
8 JAMES T. SHEEHY, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER